

STATE OF CALIFORNIA  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
STATE WATER RESOURCES CONTROL BOARD

**DIVISION OF WATER RIGHTS**

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In the Matter of Permit 19051 (Application 27835)  
**John and Collette White**

**NOTICE OF REVOCATION**

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**SOURCE:** Unnamed Stream tributary to Pope Creek thence Putah Creek thence Yolo Bypass  
**COUNTY:** Napa

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Pursuant to sections 1410-1410.2 of the California Water Code, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division), is revoking Permit 19051 because the Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 19051 and has not made beneficial use of the water in accordance with the permit, the Water Code, and the State Water Board's regulations.

In addition, the Division is revoking Permit 19051 because the Permittee has failed to use beneficially all or part of the water for the purpose for which it was appropriated in accordance with the Water Code.

The revocation is based upon the following facts, information and conclusions:

The State Water Board issued Permit 19051 on December 5, 1983. The permit authorizes William D. Smith (Permittee) to divert 8.2 acre-feet per annum to be collected from December 1 of each year to April 30 of the succeeding year from an Unnamed Stream tributary to Pope Creek for fire protection, recreational, stockwatering and irrigation purposes.

The permit requires that construction work be completed by December 1, 1986, and that the water be applied to the authorized use by December 1, 1987.

**A. PERMITTEE HAS FAILED TO COMMENCE, PROSECUTE WITH DUE DILIGENCE, AND COMPLETE THE WORK NECESSARY TO APPROPRIATE WATER UNDER THE PERMIT**

1. Progress Reports by Permittee (Progress Reports) filed with the Division for 1984 through 1987 showed no construction work had commenced.
2. Permittee requested, and on November 1, 1988 the Division granted, an extension of time to commence or complete construction work and apply the water to full beneficial use. The time extension order required construction to be complete by December 31, 1990, and that water be fully used by December 31, 1992.

3. Progress Report for 1989 stated construction work had commenced, however 95-percent of the work remained incomplete. Progress Report for 1991 stated 80-percent of the work remained to be done and estimated completion in 1994.
4. Division staff contacted the Permittee on May 22, 1995 and was informed that the reservoir had not yet been constructed.
5. Permit 19051 is subject to State Water Board Order WR 96-002 concerning all appropriate water rights of the Upper Putah Creek Watershed above Monticello Dam filed subsequent to October 19, 1945. Order WR 96-002 reflects terms and conditions of the March 10, 1995 Condition 12 Settlement Agreement (Upper Putah Creek Settlement Agreement or Agreement) through which parties arrived at a physical solution to litigate the Sacramento County Superior Court, Judicial Council Coordination Proceeding No. 2565.
6. Permittee is a signatory to the Agreement and is subject to Order WR 96-002.
7. Division staff contacted Permittee by telephone on May 8, 1996 and was advised the reservoir had not been constructed. Permittee was advised by Division staff since they are a signatory to the Agreement, Permittee could submit a "Request for Continuation" of Permit 19051 with the State Water Board no later than July 1, 1996.
8. The Division's October 1, 1996 letter noted the Permittee is a signatory to the Agreement and thereby subject to its conditions. One condition required Permittee submit a "Request for Continuation" of Permit 19051 with the State Water Board no later than July 1, 1996, if Permittee needed additional time to develop the water right project. Since the Division received no such request and the reservoir had not been constructed, Permittee was advised Permit 19051 could be revoked.
9. The Division issued a Notice of Proposed Revocation for Permit 19051 on April 9, 1998 and received no response from Permittee. The Permittee did not request a hearing.
10. The State Water Board's file contains a State Water Board Order Revoking Permit dated May 22, 1998 with a wrong application number that did not affect a revocation.
11. John White contacted the Division on March 1, 1999 as the purchaser of the Smith property to discuss the project and requested assistance in completing the 1998 Progress Report for Permit 19051. Division staff informed Mr. White the permit was revoked in May 1998. This advice was based on the revocation order in the file, which appears to have been issued for a different water right. Mr. White asked if the permit could be reinstated and was told it was unlikely.
12. The file does not confirm the date the permit was transferred to John and Collette White, but the Division's electronic database shows that the file was transferred September 12, 2003.
13. On November 5, 2007, the Division received a Putah Creek Watermaster form, the Annual Diversion Report for Water Year 1996, and a State Water Board revocation request form, all signed by Sue Smith on October 31, 1996. The revocation request form had not previously been submitted to the Division. The form states that the Permittee did not want the permit revoked, but instead seeks a continuation permit. It appears that the form was submitted to the Watermaster, not the State Water Board. Irrespective of which entity received the form, the form was dated after the July 1, 1996 cutoff date and did not include the required fee (see May 8, 1996 contact report for the required fee). The continuation request could not have been processed due to the deficiencies.
14. Permittee has failed to commence, prosecute, and complete the work as required by Permit 19051.

15. Permittee failed to submit a Request for Continuation Permit by July 1, 1996, as required by the Agreement. As a result, the State Water Board will not consider any petition for extension of time relating to Permit 19051. Therefore, the deadline to complete application of water to beneficial use remains effective.
16. Permittee failed to complete construction of the project by the December 31, 1990 deadline.
17. Permittee failed to complete application of water to beneficial use by the December 31, 1992 deadline, and therefore has not made full beneficial use of the water as contemplated in the permit and in accordance with the Water Code and rules and regulations of the State Water Board.

**B. PERMITTEE HAS NOT APPLIED THE WATER TO BENEFICIAL USE CONSISTENT WITH THE TERMS AND CONDITIONS OF THE PERMIT**

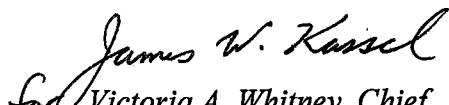
Permit 19051 authorizes the diversion and use of water subject to terms 8 and 9, which requires that construction work shall be completed on or before December 31, 1990 and complete application of the water to the proposed use shall be made on or before December 31, 1992.

**C. BASED ON THE ABOVE FACTS AND INFORMATION, THE DIVISION CONCLUDES THAT CAUSE EXISTS FOR THE REVOCATION OF PERMIT 19051 PURSUANT TO WATER CODE SECTION 1410, SUBDIVISION (a) BECAUSE:**

1. Permittee has failed to commence, prosecute with due diligence, and complete the work necessary to appropriate water under Permit 19051 and has failed to apply to beneficial use all or part of the water authorized for appropriation as contemplated in the permit and in accordance with the Water Code and the regulations of the State Water Board.
2. Permittee has not made beneficial use of the water consistent with the terms and conditions of the permit. Permittee violated terms 8 and 9 of Permit 19051.
3. On April 9, 1998, the Division issued a Notice of Proposed Revocation to Permittee by certified mail. The notice provided that unless the Division received a written request for a hearing signed by or on behalf of the Permittee within 15 days after receipt by the Permittee of the notice, the State Water Board could act upon the proposed revocation of the permit without a hearing. Permittee did not submit a request for a hearing to the Division within the time period provided.

Based on the above facts and conclusions, the State Water Board, Division of Water Rights hereby revokes Permit 19051.

STATE WATER RESOURCES CONTROL BOARD

  
Victoria A. Whitney, Chief  
Division of Water Rights

Dated:

**DEC - 6 2007**

STATE OF CALIFORNIA  
STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS

**ORDER**  
19051

APPLICATION 27835

PERMIT 19051

LICENSE                     

ORDER APPROVING A NEW DEVELOPMENT SCHEDULE,  
AND AMENDING THE PERMIT

WHEREAS:

1. Permit 19051 was issued to William D. Smith on December 5, 1983 pursuant to Application 27835.
2. A petition for extension of time within which to develop the project and apply the water to the proposed use has been filed with the State Water Resources Control Board.
3. The permittee has proceeded with diligence and good cause has been shown for extension of time.
4. Permit Condition 12 pertaining to the continuing authority of the Board should be updated to conform to standard permit term 12 as contained in Section 780(a), Title 23, California Code of Regulations.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Condition 8 of the permit be amended to read:

CONSTRUCTION WORK SHALL BE  
COMPLETED ON OR BEFORE

December 31, 1990

(0000008)

2. Condition 9 of the permit be amended to read:

COMPLETE APPLICATION OF THE  
WATER TO THE PROPOSED USE  
SHALL BE MADE ON OR BEFORE

December 31, 1992

(0000009)

3. Condition 12 of the permit be amended to read:


Pursuant to California Water Code Sections 100 and 275, and the common law public trust doctrine, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to eliminating waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement a water conservation plan, features of which may include but not necessarily be limited to: (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the Board also may be exercised by imposing further limitations on the diversion and use of water by the permittee in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution Article X, Section 2; is consistent with the public interest and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

Dated: NOVEMBER 01 1988

  
Walter G. Pettit, Chief  
Division of Water Rights

STATE OF CALIFORNIA  
~~THE RESOURCES AGENCY~~  
STATE WATER RESOURCES CONTROL BOARD  
DIVISION OF WATER RIGHTS

PERMIT FOR DIVERSION AND USE OF WATER

PERMIT 19051

Application 27835 of William D. Smith  
P. O. Box 612, Angwin, California 94508

filed on August 10, 1983, has been approved by the State Water Resources Control Board SUBJECT TO VESTED RIGHTS and to the limitations and conditions of this Permit.

Permittee is hereby authorized to divert and use water as follows:

1. Source:

Tributary to:

<u>Unnamed Stream</u>	<u>Pope Creek thence</u>
<u></u>	<u>Putah Creek thence</u>
<u></u>	<u>Yolo Bypass</u>
<u></u>	<u></u>
<u></u>	<u></u>

2. Location of point of diversion:	40-acre subdivision of public land survey or projection thereof	Section	Township	Range	Base and Meridian
North 1,881 feet and East 2,641 feet from SW corner of Section 31	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	31	10N	5W	MD

County of Napa

3. Purpose of use:	4. Place of use:	Section	Township	Range	Base and Meridian	Acres
Fire Protection						
Recreational						
Stockwatering	Unnamed Reservoir In NE $\frac{1}{4}$ of SW $\frac{1}{4}$	31	10N	5W	MD	
Irrigation	NE $\frac{1}{4}$ of SW $\frac{1}{4}$	31	10N	5W	MD	20

The place of use is shown on map filed with the State Water Resources Control Board.

5. The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed 8.2 acre-feet per annum to be collected from December 1 of each year to April 30 of the succeeding year.

This permit does not authorize collection of water to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.

(0000005)

6. The amount authorized for appropriation may be reduced in the license if investigation warrants.

(0000006)

7. Construction work shall begin within two years of the date of this permit and shall thereafter be prosecuted with reasonable diligence, and if not so commenced and prosecuted, this permit may be revoked.

(0000007)

8. Construction work shall be completed by December 1, 1986. —————→

(0000008)

9. Complete application of the water to the authorized use shall be made by December 1, 1987.

(0000009)

10. Progress reports shall be submitted promptly by permittee when requested by the State Water Resources Control Board until license is issued.

(0000010)

11. Permittee shall allow representatives of the State Water Resources Control Board and other parties as may be authorized from time to time by said Board, reasonable access to project works to determine compliance with the terms of this permit.

(0000011)

12. Pursuant to California Water Code Sections 100 and 275, all rights and privileges under this permit and under any license issued pursuant thereto, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Resources Control Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable methods of use, or unreasonable method of diversion of said water.

The continuing authority of the Board may be exercised by imposing specific requirements over and above those contained in this permit with a view to minimizing waste of water and to meeting the reasonable water requirements of permittee without unreasonable draft on the source. Permittee may be required to implement such programs as (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this permit and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

(0000012)

13. The quantity of water diverted under this permit and under any license issued pursuant thereto is subject to modification by the State Water Resources Control Board if, after notice to the permittee and an opportunity for hearing, the Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

14. Permittee is hereby put on notice that there may be years when water collected to storage under this permit will not be within the reservation of water established for the watershed upstream from Lake Berryessa in Decision 869. During such years, unless replacement water is provided on an exchange basis, permittee shall release water collected to storage under this permit during the preceding collection season at the maximum practical rate to flow into Lake Berryessa.

(0220087)

15. In order to prevent degradation of the quality of water during and after construction of the project, prior to commencement of construction permittee shall file a report pursuant to Water Code Section 13260 and shall comply with any waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Resources Control Board.

Failure of permittee to comply with this term will subject the permit to revocation, after opportunity for hearing. (0000100)

**This permit is issued and permittee takes it subject to the following provisions of the Water Code:**

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer.

Section 1391. Every permit shall include the enumeration of conditions therein which in substance shall include all of the provisions of this article and the statement that any appropriator of water to whom a permit is issued takes it subject to the conditions therein expressed.

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

Dated: DECEMBER 5 1983

STATE WATER RESOURCES CONTROL BOARD

*Raymond Walsh*

Chief, Division of Water Rights